"The power given to a Judge by section 369 (i) of the Civil Procedure Code is discretionary and one which the Court ought or ought not to exercise according to the circumstances of each case."

I have no hesitation in following Aitken J. and coming to the conclusion that the Court has a discretion whether to make the order asked for or not, and I can see no reason for holding that it is an inflexible rule that a plaintiff residing out of the jurisdiction must give security for costs. I would not hold as a matter of law that security for costs cannot be ordered against a plaintiff resident in any British territory where provision exists for the reciprocal enforcement of judgments with the Federated Malay States; but there is all the difference between enforcing an F.M.S. judgment in the Colony and enforcing one in, say, Uganda. We have very close legal relations with the Colony, an F.M.S. judgment could be quickly enforced there, and in regard to plaintiffs resident there, I would follow the decision in *Raeburn v. Andrews*[9].

Apart from any question of the Reciprocal Enforcement of Judgments Ordinance (Cap. 46), having a discretion as I hold I have, I would not make the order asked for. The application should have been made at a much earlier date and not after the date of trial had been fixed and considerable costs already incurred. It is true that in England such an application could now be entertained, but it does not follow that it would necessarily be granted. (His Lordship then examined the evidence and concluded that the fact that the plaintiff had moved to Singapore was probably known to the defendant company in January, 1939).

For the above reasons I dismissed the defendant Company's application with costs to be paid to the plaintiff in any event.

Application dismissed.

[APPELLATE CRIMINAL JURISDICTION]
GORDON-SMITH, J.
September 23, 1939.

PUBLIC PROSECUTOR v. YAP KIM BOK.

[PAHANG MAGISTRATE'S CRIMINAL APPEAL No. 2 of 1939]

PUBLIC PROSECUTOR v. TEH POH.

[PAHANG MAGISTRATE'S CRIMINAL APPEAL No. 3 of 1939]

Sentence—inadequacy—overloading.

In the case of deliberate, continued and contemptuous infringements of regulations which are necessary for the convenience and welfare of the public, such as regulations against overloading, small fines are grossly inadequate punishment.

MAGISTRATE'S CRIMINAL APPEALS.

The respondents in these appeals were charged with overloading their lorries, an offence under Section 68 (3) and punishable under Section 118 (1) of the Road Traffic Enactment, 1937, and were convicted by the Magistrate, Raub, and fined $25 and $10 respectively.

The Public Prosecutor appealed on the ground that the sentences were grossly inadequate in view of the fact that they were previously convicted for similar offence.

At the hearing of the appeals of the Appellate Judge enhanced the sentences.

A. J. Grattan-Bellew, Deputy Legal Adviser, for Public Prosecutor.

Respondents in person.

Gordon-Smith, J.—I heard these cases separately but gave one Judgment in respect of both increases of the respective fines imposed by the Magistrate.

In No. 2 case, I increased the fine to $250.00.

In this case the accused had already been convicted twice during the current year, the later conviction being only a few weeks prior to this third offence.

His lorry was over-loaded by more than two tons and therefore there was no question of the over-loading being accidental or by mistake.

In my opinion, it was a deliberate, continued and contemptuous infringement of regulations which are necessary for the convenience and welfare of the public. The restriction on loads to be carried over these minor roads is necessary to preserve such roads and bridges from serious damage and one can well imagine that wooden bridges are not necessarily constructed to carry loads of 7—8 tons on a lorry, probably going at a considerable pace. Damage to such bridges might put a road out of action for months, to the inconvenience of the public. Moreover, there is a considerable danger that a serious accident might be caused. This is apart altogether to the damage that might be caused to the surface of the roads by continuous use by heavy vehicles over roads which are not constructed for and not suitable for use by such heavily loaded lorries.

In No. 3 case, I increased the fine to $100.00 only as there had been only one previous conviction this year but this also had been within a few weeks of this last conviction. Also, the over load was not to the same extent as in the other case.

In my opinion the fines imposed by the Magistrate ($25.00 and $10.00 respectively) were ludicrously inadequate, in view of the circumstances and the recent previous convictions.

I warned both Respondents that the Magistrate had the power to award imprisonment without the option of a fine and expressed the hope that he would do, if they come up again before him for similar offences.

I believe that both enhanced fines were paid on the spot by the Respondents!

Appeal allowed.

Sentences enhanced.

[REVISIONAL CIVIL JURISDICTION]
POYSER, C.J.
November 2, 1939.

RAMACHANDRAN
v.
KANDIAH alias SUBRAMANIAM.

[SELANGOR CIVIL APPLICATION No. 63 of 1939]

Medical Registration Enactment (Cap. 178) Ss. 5, 10—practitioner in native medicine—whether entitled to recover charges for treatment.

There is nothing in the Medical Registration Enactment (Cap. 178) to prevent a practitioner in native medicine, though not registered as a medical practitioner under the Enactment, from recovering reasonable charges for his services.

CIVIL REVISION.

Petitioner in person.

G. W. de Silva for Plaintiff-Respondent.

Cur. Adv. Vult.

Poyser, C.J.—There is no reason for dissenting from the Magistrate on any of his findings of fact. The only question that arises on this petition is whether the plaintiff, who is not registered as a medical practitioner, can recover charges for medical treatment from the defendant.

The plaintiff is the proprietor of the Ayurvedic Medical Hall at 72 Station Road, Sentul, Kuala Lumpur. He has a diploma from the Lanka Ayurvedic Medical College, Jaffna, Ceylon. The diploma (or a copy thereof) was not included in the record, but I assume it set out that the plaintiff was qualified as a practitioner in Ayurvedic medicine.

Section 5 of the Medical Registration Enactment (Cap. 178) provides that only Registered Medical Practitioners may recover in any Court charges for medical and surgical services, but section 10 specifically recognises the practice of native systems of therapeutics. This latter section is as follows:—

> "Nothing contained in this Enactment shall be construed to prohibit or prevent the practice of native systems of therapeutics according to Indian, Chinese or other Asiatic method."

Ayurvedic medical treatment is a well-known Asiatic system of therapeutics. It has been recognised as such by the Ceylon Courts, and I can see no reason why it should not be so recognised in the F.M.S. There is, therefore, nothing in the Medical Registration Enactment to prevent a practitioner in Ayurvedic Medicine from recovering reasonable charges for his services.

In this case the plaintiff's charges appear to have been very reasonable, and he was entitled to judgment on his claim.

I refuse to exercise any revisionary powers.

Petition refused.

[ORIGINAL CIVIL JURISDICTION]
GORDON-SMITH, Ag. J.A.
November 3, 1939.

RE CHIA KENG HOCK; EXPARTE PUSHPALINGAM.

[SELANGOR WAGE-EARNER'S ADMINISTRATION ORDER No. 25 of 1939]

Bankruptcy Enactment (Cap. 55) Ss. 78, 79—realisation of assets of bankrupt—application by creditor for order calling on Official Assignee to take action—procedure.

Before a creditor is entitled to apply for an order under Section 79 of the Bankruptcy Enactment calling upon the Official Assignee to take steps for the benefit of the creditors generally to get in and realise assets alleged to belong to a bankrupt, he should act under the provisions of Section 78 of the same Enactment.

MOTION.

F. A. Briggs for the applicant (Creditor).

K. R. Blackwell, Official Assignee, F.M.S., in person. Although applicant does not state on what authority he has made his application to Court, it is presumed that he has acted under Section 79 of Cap. 55, *i.e.* he is aggrieved by an act or decision of the Official Assignee. In his affidavit dated the 28th October 1939 the act or decision complained of is what he was told by his solicitor after the latter had had an informal meeting with the Official Assignee. He submitted that there had been no legal act or decision. He contended that as Section 78 immediately precedes Section 79, an aggrieved creditor should not have rushed to Court and taken action under Section 79 when a clear course of action is indicated in Section 78. This section states that the Official Assignee shall in